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Attorney for Plaintiff, JAMES M. KINDER, an individual

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,

Plaintiff,

v.

HARRAH'S ENTERTAINMENT, Inc. and
DOES 1 through 100, inclusive,

Defendants.

Lead Case No. 07 CV 2132 DMS (AJB)
[Consolidated with 07CV2226 DMS (AJB)]

Judge: Hon. Dana M. Sabraw
Magistrate: Hon. Anthony J. Battaglia

**DECLARATION OF CHAD AUSTIN IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO DECLARE HIM A
VEXATIOUS LITIGANT AND
REQUIRE HIM TO POST A BOND**

Date: April 25, 2008
Time: 1:30 p.m.
Courtroom: 10

I, CHAD AUSTIN, declare as follows:

1. I am an attorney at law duly licensed and admitted to practice before all courts of the State of California, the United States District Court, Southern District of California and the Ninth Circuit Court of Appeals and have been attorney of record for Plaintiff in this matter since its inception. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated on information and belief.

2. This declaration is submitted in support of Plaintiff JAMES M. KINDER's opposition to Defendant's motion to declare him a vexatious litigant and to require him to post a bond. The matters stated in this declaration are true, of my own personal knowledge.

3. Attached hereto as Exhibit G is a true and correct copy of a ruling from now federal District Judge Janis Sammartino, in which she found that Plaintiff's action in *Kinder v. Adecco*, San Diego Superior Court Case No. GIC882000, was not commenced in violation of the pre-filing order referenced Defendant in the instant motion in that he was represented by counsel.

4. Telcordia ® has been in existence under different corporate names since 1984. One of the many software programs available from Telcordia ® is the Telcordia ® Telemarketing Data Source (TTDS) Version 3.0 which, for an annual cost of only \$690.00, enables any telemarketer, collection agency or any other company that uses Automatic Telephone Dialing Systems to download the basic database of proscribed numbers which, when incorporated with a reprogramming of their autodialer, enables their autodialer to suppress (not dial) calls to category specific area codes and prefixes (such as prefixes dedicated to pager numbers and cell phones).

5. This technology is readily available to anyone in the telemarketing and collection agency industries and the failure to subscribe to the TTDS places any company in the telemarketing or collection industries at great risk of illegally calling proscribed landline numbers, cellular telephone numbers and/or paging numbers, i.e., numbers assigned to a paging service such as Plaintiff's number 619-999-9999.

1 6. Enclosed as Exhibit H is a Telcordia ® Telemarketing Data Source (TDS)
2 printout which, as is explained in paragraph 2 of said printout, "If your company has call center
3 operations...[and] needs to suppress wireless or pager number from a database application, or
4 other similar needs, you'll find the Telemarketing Data Source a valuable tool for your business."
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7 7. Enclosed as Exhibit I is a Telcordia ® sample printout of California area codes
8 and prefixes of numbers assigned to a paging service to which Automatic Telephone Dialing
9 System initiated calls cannot be made lawfully. Please note that this is a *sample only* which is
10 available on the Telcordia ® website and is not intended to nor does it include all of the area
11 codes and prefixes in California. Specifically, in this sample only, the area code 619 and the
12 prefix 999 are not included because this is a free sample only and is intended for the limited
13 purpose of acquainting a potential Telcordia ® customer with the general format of its product.
14 However, if one purchases the Telemarketing Data Source from Telcordia ®, all area codes and
15 prefixes for the requested target market are included, including Plaintiff's number 619-999-9999.
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1 8. On or about May 16, 2007, I logged on to www.telcordia.com (the website for
2 Telcordia ®) and printed true and correct copies of the materials found therein, which
3 materials comprise Exhibits H and I, attached hereto.
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6 I declare under penalty of perjury under the laws of the State of California and the laws of
7 the United States that the foregoing is true and correct and that this declaration was executed by
8 me on April 11, 2008 in San Diego, California.

9 DATED: April 11, 2008
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11 By: /s/ Chad Austin
12 CHAD AUSTIN, Esq., Attorney for
13 Plaintiff, JAMES M. KINDER
14 Email: chadaustin@cox.net
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